

**IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF NEW YORK**

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CAROTEK, INC.,	:	
	:	
Plaintiff/Counter-defendant	:	
	:	
v.	:	Civil Action No. 07 Civ. 11163 (NRB)
	:	ECF Case
KOBAYASHI VENTURES, LLC,	:	
	:	
Defendant/Counter-plaintiff.	:	

**KOBAYASHI VENTURES, LLC'S ANSWER TO  
PLAINTIFF'S AMENDED DECLARATORY JUDGMENT COMPLAINT  
AND COMPLAINT FOR AFFIRMATIVE MONETARY RELIEF**

Kobayashi Ventures, LLC ("Kobayashi Ventures"), by and through its attorneys, Jeffrey M. Schwaber, Alexia Kent Bourgerie, and Stein, Sperling, Bennett, De Jong, Driscoll & Greenfeig, P.C., hereby answers Plaintiff's "Amended Declaratory Judgment Complaint and Complaint for Affirmative Monetary Relief ("Amended Complaint")," stating as follows:

To the specifically enumerated paragraphs of the Amended Complaint, by like paragraphs, Kobayashi Ventures avers as follows:

1. Kobayashi Ventures denies each and every allegation contained in paragraph 1 of the Amended Complaint in that Plaintiff asserts a legal conclusion, and leaves Plaintiff to its burden with respect thereto.
2. Kobayashi Ventures denies each and every allegation contained in paragraph 2 of the Amended Complaint in that Plaintiff asserts a legal conclusion, and leaves Plaintiff to its burden with respect thereto.

3. Kobayashi Ventures denies each and every allegation contained in paragraph 3 of the Amended Complaint in that Plaintiff asserts a legal conclusion, and leaves Plaintiff to its burden with respect thereto.

4. Kobayashi Ventures denies each and every allegation contained in paragraph 4 of the Amended Complaint in that Plaintiff asserts a legal conclusion, and leaves Plaintiff to its burden with respect thereto.

5. Kobayashi Ventures is without sufficient knowledge or information to either admit or deny the allegations contained in paragraph 5 of the Amended Complaint.

6. Kobayashi Ventures denies each and every allegation contained in paragraph 6 of the Amended Complaint, except admits that it is a privately held limited liability company which is organized and existing under the laws of the State of Delaware. Kobayashi Ventures admits that it is the assignee of, *inter alia*, all right, title, and interest in the License Agreement.

7. Kobayashi Ventures denies each and every allegation contained in paragraph 7 of the Amended Complaint and leaves the document referred to in paragraph 7 to speak for itself. Kobayashi Ventures admits only that its counsel sent to Carotek a letter dated October 29, 2007.

8. Kobayashi Ventures denies each and every allegation contained in paragraph 8 of the Complaint and leaves the document referred to in paragraph 8 to speak for itself. Kobayashi Ventures admits only that its counsel sent to Carotek a letter dated November 26, 2007.

9. Kobayashi Ventures denies each and every allegation contained in paragraph 9 of the Amended Complaint and leaves the document referred to in paragraph 9 to speak for itself.

10. Kobayashi Ventures denies each and every allegation contained in paragraph 10 of the Complaint, except admits that there is an actual and justiciable controversy between the parties set forth in the Counterclaim.

AS AND FOR KOBAYASHI VENTURES' RESPONSE  
TO CAROTEK'S CLAIM FOR DECLARATION THAT  
CAROTEK HAS NOT BREACHED THE  
LICENSE AGREEMENT OF DECEMBER 8, 1998

11. Kobayashi Ventures adopts and incorporates by reference its answers to paragraphs 1 through 10 above as if fully set forth herein.

12. Kobayashi Ventures denies knowledge or information sufficient to form a belief as to the truth or falsity of the allegations contained in paragraph 12 of the Amended Complaint.

13. Kobayashi Ventures denies each and every allegation contained in paragraph 13 of the Amended Complaint, except admits that there is an actual and justiciable controversy between the parties as set forth in the Counterclaim.

14. Kobayashi Ventures denies each and every allegation contained in paragraph 14 of the Amended Complaint in that Plaintiff asserts a legal conclusion, and leaves Plaintiff to its burden with respect to same.

AS AND FOR KOBAYASHI VENTURES' RESPONSE  
TO CAROTEK'S CLAIM FOR MONETARY RELIEF

15. Kobayashi Ventures adopts and incorporates by reference its answers to paragraphs 1 through 14 above as if fully set forth herein.

16. Kobayashi Ventures denies each and every allegation contained in paragraph 16 of the Amended Complaint.

17. Kobayashi Ventures denies each and every allegation contained in paragraph 17 of the Amended Complaint and leaves the document referred to in paragraph 17 to speak for itself.

18. Kobayashi Ventures denies each and every allegation contained in paragraph 18 of the Amended Complaint and leaves the document referred to in paragraph 18 to speak for itself.

19. Kobayashi Ventures denies each and every allegation contained in paragraph 19 of the Amended Complaint.

20. Kobayashi Ventures denies each and every allegation contained in paragraph 20 of the Amended Complaint and leaves the document referred to in paragraph 20 to speak for itself.

21. Kobayashi Ventures denies each and every allegation contained in paragraph 21 of the Amended Complaint and leaves the document referred to in paragraph 21 to speak for itself, except admits that it advised Carotek of its ownership of the License Agreement and its intention to enforce the License Agreement.

22. Kobayashi Ventures denies each and every allegation contained in paragraph 22 of the Amended Complaint and leaves the document referred to in paragraph 22 to speak for itself.

23. Kobayashi Ventures denies each and every allegation contained in paragraph 23 of the Amended Complaint.

AS AND FOR KOBAYASHI VENTURES' RESPONSE  
TO CAROTEK'S CLAIM FOR DECLARATORY JUDGMENT  
OF PATENT INVALIDITY AND UNENFORCEABILITY

24. Kobayashi Ventures leaves the documents referred to in paragraph 24 to speak for themselves. Kobayashi Ventures admits to being the owner of, among other things, all right, title and interest in and to U.S. Patent No. 5,717,456.

25. Kobayashi Ventures leaves the documents referred to in paragraph 25 to speak for themselves. Kobayashi Ventures admits to being the owner of, among other things, all right, title and interest in and to U.S. Patent No. 5,821,990.

26. Kobayashi Ventures leaves the documents referred to in paragraph 26 to speak for themselves. Kobayashi Ventures admits to being the owner of, among other things, all right, title and interest in and to U.S. Patent No. 6,211,905.

27. Kobayashi Ventures leaves its pleadings wherein it has asserted its claims, and Carotek's pleadings wherein it has asserted its claims/denials, referred to in paragraph 27 to speak for themselves.

28. Kobayashi Ventures denies each and every allegation contained in paragraph 28 of the Amended Complaint.

29. Kobayashi Ventures denies each and every allegation contained in paragraph 29, including subparagraphs (a) through (h), of the Amended Complaint.

AS AND FOR KOBAYASHI VENTURES' RESPONSE  
TO CAROTEK'S CLAIM FOR AFFIRMATIVE MONETARY RELIEF

30. Kobayashi Ventures adopts and incorporates by reference its answers to paragraphs 1 through 29 above as if fully set forth herein.

31. Kobayashi Ventures denies each and every allegation contained in paragraph 31 of the Amended Complaint.

32. Kobayashi Ventures denies each and every allegation contained in paragraph 32 of the Amended Complaint.

AS AND FOR KOBAYASHI VENTURES' RESPONSE  
TO CAROTEK'S CLAIM FOR RELIEF--  
INTERFERENCE WITH PROSPECTIVE ADVANTAGE

33. Kobayashi Ventures adopts and incorporates by reference its answers to paragraphs 1 through 32 above as if fully set forth herein.

34. Kobayashi Ventures denies each and every allegation contained in paragraph 34 of the Amended Complaint.

35. Kobayashi Ventures denies each and every allegation contained in paragraph 35 of the Amended Complaint.

AS AND FOR KOBAYASHI VENTURES' RESPONSE  
TO CAROTEK'S CLAIM FOR RELIEF--  
LIBEL AND DEFAMATION

36. Kobayashi Ventures adopts and incorporates by reference its answers to paragraphs 1 through 35 above as if fully set forth herein.

37. Kobayashi Ventures denies each and every allegation contained in paragraph 37 of the Amended Complaint.

38. Kobayashi Ventures denies each and every allegation contained in paragraph 38 of the Amended Complaint.

39. Kobayashi Ventures denies each and every allegation contained in paragraph 39 of the Amended Complaint.

40. Kobayashi Ventures denies each and every allegation contained in paragraph 40 of the Amended Complaint.

AS AND FOR KOBAYASHI VENTURES' RESPONSE  
TO CAROTEK'S CLAIM FOR RELIEF--  
UNFAIR TRADE PRACTICES

41. Kobayashi Ventures adopts and incorporates by reference its answers to paragraphs 1 through 40 above as if fully set forth herein.

42. Kobayashi Ventures denies each and every allegation contained in paragraph 42 of the Amended Complaint in that Plaintiff asserts a legal conclusion, and leaves Plaintiff to its burden with respect thereto.

43. Kobayashi Ventures is without sufficient knowledge or information to either admit or deny the allegation that Plaintiff, "is an entity organized in the state of North

Carolina[.]” Kobayashi Ventures denies each and every remaining allegation contained in paragraph 43 of the Amended Complaint.

44. Kobayashi Ventures is without sufficient knowledge or information to either admit or deny the allegation that certain customers have done substantial business within the state of North Carolina. Kobayashi Ventures denies each and every remaining allegation contained in paragraph 44 of the Amended Complaint.

45. Kobayashi Ventures admits that Jim Dechman and John Fiore are members of Kobayashi Ventures and that they have an ownership interest in Monitoring Technology Corporation (“MTC”). Kobayashi Ventures admits that MTC and Plaintiff were competitors. Kobayashi Ventures denies each and every remaining allegation contained in paragraph 45 of the Amended Complaint.

46. Kobayashi Ventures denies each and every allegation contained in paragraph 46, including subparagraphs (a) through (i) and the additional paragraph thereafter, of the Amended Complaint.

47. Kobayashi Ventures denies each and every allegation contained in paragraph 47 of the Amended Complaint.

48. Kobayashi Ventures denies each and every allegation contained in paragraph 48 of the Amended Complaint.

49. Kobayashi Ventures denies each and every allegation contained in paragraph 49 of the Amended Complaint.

50. Kobayashi Ventures denies each and every allegation contained in paragraph 50 of the Amended Complaint.

AS AND FOR KOBAYASHI VENTURES' RESPONSE  
TO CAROTEK'S CLAIM FOR RELIEF--  
QUASI-ESTOPPEL

51. Kobayashi Ventures adopts and incorporates by reference its answers to paragraphs 1 through 50 above as if fully set forth herein.

52. Kobayashi Ventures admits that MTC is a licensee of Kobayashi's Patented Technology. Kobayashi Ventures denies each and every remaining allegation contained in paragraph 52 of the Amended Complaint.

53. Kobayashi Ventures leaves the document referred to in paragraph 53 of the Amended Complaint to speak for itself.

54. Kobayashi Ventures denies each and every allegation contained in paragraph 54 of the Amended Complaint.

55. Kobayashi Ventures denies each and every allegation contained in paragraph 55 of the Amended Complaint.

56. Kobayashi Ventures denies each and every allegation contained in paragraph 56 of the Amended Complaint.

AS AND FOR KOBAYASHI VENTURES' RESPONSE  
TO CAROTEK'S CLAIM FOR RELIEF—FRAUD

57. Kobayashi Ventures adopts and incorporates by reference its answers to paragraphs 1 through 56 above as if fully set forth herein.

58. Kobayashi Ventures denies each and every allegation contained in paragraph 58 of the Amended Complaint.

59. Kobayashi Ventures denies each and every allegation contained in paragraph 59 of the Amended Complaint.

60. Kobayashi Ventures denies each and every allegation contained in paragraph 60 of the Amended Complaint.



AS AND FOR KOBAYASHI VENTURES' RESPONSE  
TO CAROTEK'S CLAIM FOR ATTORNEY'S FEES—BAD FAITH LITIGATION

61. Kobayashi Ventures adopts and incorporates by reference its answers to paragraphs 1 through 60 above as if fully set forth herein.

62. Kobayashi Ventures denies each and every allegation contained in paragraph 62 of the Amended Complaint.

63. Kobayashi Ventures denies each and every allegation contained in paragraph 63 of the Amended Complaint.

64. Kobayashi Ventures denies each and every allegation contained in paragraph 64 of the Amended Complaint.

65. Kobayashi Ventures denies each and every allegation contained in paragraph 65 of the Amended Complaint in that Plaintiff asserts a legal conclusion, and leaves Plaintiff to its burden with respect thereto.

66. Kobayashi Ventures denies each and every allegation contained in paragraph 66 of the Amended Complaint.

AS AND FOR KOBAYASHI VENTURES' RESPONSE  
TO CAROTEK'S PRAYER FOR RELIEF

Kobayashi Ventures denies each and every allegation contained in the Prayer for Relief section, including subparagraphs (A) through (L), of the Amended Complaint in that Plaintiff is not entitled to the relief sought therein.

AS AND FOR A FIRST DEFENSE

67. The Amended Complaint fails to state a claim upon which relief can be granted.

AS AND FOR A SECOND DEFENSE

68. Kobayashi Ventures further intends to rely upon all defenses, legal and/or equitable, which may be available to it based upon the facts as may become known before and during the trial of this matter.

AS AND FOR A THIRD DEFENSE

69. Any and all other claims or allegations contained in the Amended Complaint, not otherwise expressly admitted or denied herein, are hereby denied.

AS AND FOR A FOURTH DEFENSE

70. The Amended Complaint is barred, in whole or in part, by fraud, illegality, and the statute of limitations.

By: /s/  
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Alexia Kent Bourgerie, *pro hac admission*  
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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 11th day of August, 2008, I will electronically file the foregoing with the Clerk of the Court using the ECF system, which will then send a notification of such filing (NEF) to the following:

Raymond R. Castello  
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Devin Robinson  
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380 Lexington Avenue  
Suite 2120  
New York, NY 10168

And I hereby certify that I will mail the document by U.S. mail to the following non-filing user(s):

W. Thad Adams, III  
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